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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,259	03/25/2004	Karen A. Sheppard	10236A	6912

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EXAMINER

AHMED, SHEEBA

ART UNIT PAPER NUMBER

1773

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/809,259

Applicant(s)

SHEPPARD ET AL.

Examiner

Sheeba Ahmed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 14-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. Amendments to claims 14-32 have been entered in the above-identified application. **Claims 14-32 are pending and under consideration.**

### *Terminal Disclaimer*

2. The terminal disclaimers filed on June 12, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,472,077 and 6,074,762 have been reviewed and are accepted. The terminal disclaimers have been recorded.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 14-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cretekos et al. (US 6,074,762) in view of Park et al. (US 4,632,869).

Cretekos et al. disclose a multilayer film having a core layer, a block resistant layer (***corresponding to the heat sealable layer of the claimed invention***) which inhibits blocking to a functional layer of the film, which is printable or sealable (Column 1, lines 4-8). The core layer comprises a thermoplastic and has a first side and a

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second side, the functional layer is on the first side of the core layer and the block resistant layer is on the second side of the core layer (Column 2, lines 1-10). The core layer comprises a propylene homopolymer or a copolymer of propylene and minor amounts of a 2-4 carbon atom olefin, i.e., a propylene-ethylene copolymer or a propylene-butylene copolymer (Column 3, lines 23-30). The block resistant layer comprises a copolymer of ethylene and propylene or a polymer of ethylene, propylene, and butylene (Column 3, lines 44-50). The functional layer may comprise an ethylene-propylene-butylene polymer (Column 3, lines 51-55). The block resistant layer is compounded with 0.05 to 10 weight percent of a particular kind of polydialkylsiloxane known as silicone gum which has a viscosity of 10 to 20 million cSt (Column 3, lines 66-67 and Column 4, lines 20-25, 52-54 and 67). The properties of the film may be enhanced by adding antiblock additives in an amount ranging from 0.1 to 3 weight % ***(thus meeting the antiblocking agent weight percent limitations of independent claim 14)*** and examples include spherical particles made from methyl methacrylate resin having an average particle diameter of 1 to 15 microns (Column 5, lines 32-60). Each layer may, optionally, comprise antistatic additives or antiblock additives (Column 5, lines 39-42). The multilayer film is typically made by coextruding the core layer together with the block inhibiting layer and the functional layer (Column 6, lines 32-35). Optionally, one or both of the external surfaces maybe flame or corona treated (Column 6, lines 40-45). Examples 1 and 2 show that the functional layer may be treated while the antiblock layer is left untreated and that the core layer may have a thickness of 18.8 microns and the block inhibiting layer and the functional layer may

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have thickness' of 0.6 microns. Example 1 further shows that the core layer is comprised of a propylene polymer and is free of an antistatic agent and a fatty acid amide slip additive. The film comprises at least three layers and additional layers may be incorporated.

Cretekos et al. fail to disclose that the core layer comprises a cavitating agent selected from the group consisting of polybutylene terephthalate, calcium carbonate and blends thereof.

However, Park et al. disclose opaque films having an improved degree of opacity and an enhanced brightness and having at least one skin layer thereon (Column 1, lines 23-32). The opaque film comprises a thermoplastic polymer matrix comprising void-initiating particles of polybutylene terephthalate (Column 1, lines 41-51). The polybutylene terephthalate has good tensile strength, toughness and dimensional stability, low water absorption and low static and dynamic coefficients of friction (Column 2, lines 41-52). The thermoplastic resin matrix of the opaque film may be thermoplastic resin such as polypropylene or polyethylene, polybutylene and copolymers thereof (Column 2, lines 56-68 and Column 3, lines 1-5).

Accordingly, it would have been obvious to one having ordinary skill in the art to add a cavitating agent to the core layer disclosed by Cretekos and to specifically add a polybutylene terephthalate cavitating agent given that Park et al. specifically teach that such films have an improved degree of opacity and an enhanced brightness and that polybutylene terephthalate is a desirable cavitating agent given that it has good tensile

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strength, toughness and dimensional stability, low water absorption and low static and dynamic coefficients of friction.

Furthermore, Cretekos fails to disclose that the first film structure is laminated to a second film structure wherein the second film comprises the same structure as the first film.

However, Cretekos does teach that the film comprises at least three layers and additional layers may be incorporated and hence it would have been obvious to laminate the film structure to another film structure having the same structure as the first film structure given that the courts have held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *See In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Furthermore, the Examiner takes the position that the block resistant layer disclosed by Cretekos et al. is inherently heat sealable given that the chemical composition of the block resistant layer as disclosed by Cretekos et al. and the heat sealable layer of the claimed invention is identical. Furthermore, with regards to the limitations that the film structure has a force over forming collar value of less than 20 pounds and a hot slip value of less than 20 at 290°C, the Examiner takes the position that such property limitations are inherently met by the multilayer film disclosed by Cretekos et al. given that the multilayer film has the same structure (i.e., the same number of layers and the same order of layers), the same chemical composition (i.e., each corresponding layer has the same chemical composition), and is processed by the same method (i.e., co-extrusion).

***Response to Arguments***

4. Applicant's arguments filed on June 12, 2006 with respect to the rejection of claims 14-32 under 35 U.S.C. 103(a) as being unpatentable over Cretekos et al. (US 6,074,762) in view of Park et al. (US 4,632,869), as it applies to the now amended claims 14-32, have been fully considered and are persuasive.

However, the Declaration filed on June 12, 2006 under 37 CFR 1.131 is ineffective to overcome the Cretekos et al. (US 6,074,762) reference because the Declaration is for a different case, i.e., the application No. on the Declaration is not that of the instant application and as such the Declaration can not be entered in this case.

Hence, the above rejection is maintained.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (571)272-1504. The examiner can normally be reached on Mondays and Thursdays from 9:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sheeba Ahmed

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November 12, 2006